

# Cross-Border Enforcement of Claims in the EU

History, Present Time and Future  
Second Edition

Mikael Berglund

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EUROPEAN MONOGRAPHS



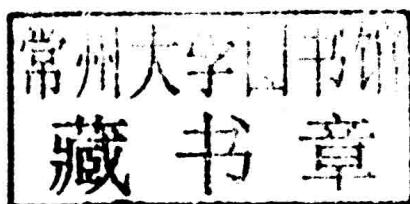
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# Cross-Border Enforcement of Claims in the EU

## EUROPEAN MONOGRAPHS

In the European Monographs series this book, *Cross-Border Enforcement of Claims in the EU: History, Present Time and Future*, 2nd Edition, is the sixty-fifth title. The titles published in this series are listed at the end of this volume.

## About the Author

Mikael Berglund, born in 1956, is a Doctor of Laws and an Associate Professor in Procedural Law at Uppsala University, Sweden. He has practiced in court, as a private lawyer and has the competence of a senior enforcement officer. Since 1993 he has been specializing in the legal areas of international enforcement of private and public claims as a Legal Counselor at the Swedish Enforcement Authority.

# Preface

This second updated and extended edition of the book *Cross-Border Enforcement of Claims in the EU: History, Present Time and Future* is dedicated to the need for extensive systematic information, and the problems, related to the subject. It addresses the possibilities and limitations related to the cross-border enforcement of claims in the EU, but also assumes a broader historical and international approach than only the EU. It is of interest to private and public creditors holding an enforceable title of execution, debtors, courts and administrative bodies, who are concerned by activities related to the enforcement, or recovery, of such claims. Hopefully, it will provide some useful information and guidance.

The book is addressed to the readers in and outside of Europe, who are interested in the subject of cross-border enforcement of contractual claims, maintenance claims in family matters, tax and social security claims and claims related to criminal matters in the EU. Besides the possible alternative to enforcement, international insolvency, is treated.

This book covers all the most important legal developments since the publishing of the first edition in 2009.<sup>1</sup> Some few examples are: the new Brussels I regulation (1215/2012), the Rome I regulation (593/2008), the Maintenance regulation (4/2009), the new Recovery directive (2010/24/EU), the new Implementing social security regulation (987/2009), the Council of Europe and OECD convention on mutual administrative assistance in tax matters, as amended in 2010, the Financial Penalties Framework Decision (2005/214/JHA) and the Confiscation Framework Decision (2006/783/JHA). Recent ECJ and ECHR case law is drawn on liberally. The contents of the book reflects developments until 15 February 2014.

I would like to thank all persons, not least my colleagues, who have given me inspiration in my work.

Mikael Berglund  
Stockholm 15 February 2014

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1. The first edition of the book was essentially published based on the manuscript of a legal thesis on the same subject which was put forward by Mikael Berglund at a public academic disputation for a Doctor of Laws degree at the Stockholm School of Economics on 19 Sep. 2008.

# List of Abbreviations

The following abbreviations are used for European Union law, conventions, and common expressions, mainly following the alphabetic order in the right column, which are used with certain frequency in the text.

Action plan of the Council and the Commission	Action plan of the Council and the Commission on how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice of 3 December 1998
ALI	American Law Institute
ALI-UNIDROIT Principles of Transnational Civil Procedure	Principles of Transnational Civil Procedure adopted by the American Law Institute (ALI) in May 2004 and by the International Institute for the Unification of Private Law (UNIDROIT) in April 2004
Art.	Article
Bankruptcy convention between France and Monaco	La Convention relative à la faillite et à la liquidation judiciaire entre la France et la principauté de Monaco du 13 Septembre 1950
Benelux convention on the mutual assistance for the recovery of tax claims	La Convention entre la Belgique, le Grand-Duché de Luxembourg et les Pays-Bas, relative à l'assistance réciproque en matière de recouvrement de créances fiscales du 5 September 1952



Brussels convention	Convention on jurisdiction and the enforcement of judgments in civil and commercial matters, done at Brussels on 27 September 1968
CEPEJ	European Commission for the Efficiency of Justice
Commission's Implementing Decision	Commission's Implementing Decision of 18 November 2011 laying down detailed rules in relation to certain provisions of Council Directive 2010/24/EU concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures, C (2011) 8193 final
Confiscation Framework Decision	Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders
Council of Europe and OECD convention on mutual administrative assistance in tax matters	Convention on mutual administrative assistance in tax matters, done at Strasbourg on 25 January 1988, Council of Europe and OECD, as amended by a protocol signed on 27 May 2010
Council of Europe's recommendation on archiving of electronic documents in the legal sector	Council of Europe's recommendation on archiving of electronic documents in the legal sector, Rec (2003) 15, of 9 September 2003
Council of Europe's recommendation on enforcement	Council of Europe's recommendation on enforcement, Rec (2003) 17, of 9 September 2003
Council of Europe's recommendation on the interoperability of information systems in the justice sector	Council of Europe's recommendation on the interoperability of information systems in the justice sector, Rec (2003) 14, of 9 September 2003
Council's programme of measures for implementation of the principle of mutual recognition	Council draft programme (2001/C 12/01) of measures for implementation of the principle of mutual recognition of decisions in civil and commercial matters

Data protection Directive	Directive 46/95/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data
Ds	Departementsserien (Series of Swedish Ministries)
EBR	European Business Register
EC	European Communities
EC Treaty	Treaty establishing the European community, consolidated version of 24 December 2002, as amended in 2003
ECHR	European Court of Human Rights
ECJ	European Court of Justice, Court of Justice of the EC
ETS	European Treaty Series
EU Treaty	Treaty on European Union, as last amended by the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007
EUCARIS	European Car and Driving Licence Information System
Eulis	European Land Information Service
EUR	International currency code for Euro/European currency unit
European Convention on Human Rights	Convention for the protection of human rights and fundamental freedoms, Council of Europe, done at Rome on 4 November 1950, as amended by protocol No. 11
European Enforcement Order for uncontested claims	Regulation (805/2004/EC) of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims

European Judicial Network in civil and commercial matters	Council decision (2001/470/EC) of 28 May 2001 establishing a European Judicial Network in civil and commercial matters
European Order for payment procedure	Regulation (1896/2006/EC) of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure
European Small Claims Procedure	Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July establishing a European Small Claims Procedure
European State immunity convention	European convention on State immunity, done at Basle on 16 May 1972
European Union	EU
FEU Treaty	Treaty on the Functioning of the European Union, as last amended by the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007
Financial Penalties Framework Decision	Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties
ICJ	International Court of Justice
Implementing agreement to the Nordic agreement on assistance in tax matters	Agreement according to Article 20 of the agreement between the Nordic countries for mutual administrative assistance in tax matters of 7 December 1989, as amended on its entry into force on 1 January 1998

Implementing recovery regulation	Commission Implementing Regulation (EU) No 1189/2011 of 18 November 2011 laying down detailed rules in relation to certain provisions of Council Directive 2011/24/EU concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures
Implementing social security regulation	Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems
Insolvency regulation	Council regulation (EC)/No 1346/2000 of 29 May 2000 on insolvency proceedings
IOTA	Intra-European Organisation of Tax Administrations
Late payment's directive	Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions
LNTS	League of Nations Treaty Series
Maintenance regulation	Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations
Moscow Resolution	Resolution No. 3 of the 24th Conference of European Justice Ministers in Moscow in October 2001 on the 'General approach and the means of achieving effective enforcement of judicial decisions'
New Brussels I regulation	Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters

New Lugano convention	Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, done at Lugano on 30 October 2007
New York convention on foreign arbitral awards	Convention on the recognition and enforcement of foreign arbitral awards, done at New York on 10 June 1958
Nordic agreement on assistance in tax matters	Agreement between the Nordic countries for mutual administrative assistance in tax matters, done at Copenhagen on 7 December 1989
Nordic bankruptcy convention	Convention between Denmark, Finland, Iceland, Norway and Sweden regarding bankruptcy of 7 November 1933, as amended in 1977 and 1982
Nordic convention on recognition and the enforcement of judgments in civil matters	Convention between Sweden, Denmark, Finland, Iceland and Norway on recognition and the enforcement of judgments in civil matters, done at Copenhagen on 11 October 1977
OECD	Organization for Economic Co-operation and Development
OJ	Official Journal of the European Union
Old Brussels I regulation	Council regulation (44/2001/EC) on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters
Old Lugano convention	Convention on jurisdiction and the enforcement of judgments in civil and commercial matters, done at Lugano on 16 September 1988
para.	Paragraph
Prop.	Regeringens proposition (proposal from the Swedish Government to the Parliament concerning a new act, travaux préparatoires to legislation)

Recovery directive	Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures
Rome I regulation	Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I)
Rome II regulation	Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II)
SE	Societas Europaea
SEK	International currency code for Swedish currency, krona
Service of legal documents' regulation	Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents)
Social security regulation	Regulation 883/2004/EC of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems as amended by Regulation (EC) No 988/2009 of the European Parliament and of the Council of 16 September 2009 amending Regulation (EC) No 883/2004 on the coordination of social security systems, and determining the content of its Annexes
SvJT	Svensk Juristtidning (Swedish Law Journal)

Tampere conclusions	Presidency conclusions of the European council 15 and 16 October 1999 in Tampere
TEE	Titre Exécutoire Européen
Treaty of Lisbon	Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007
UIHJ	L'Union Internationale des Huissiers de Justice et Officiers Judiciaires
UIPE	Uniform instrument permitting enforcement according to the Recovery directive
UN	United Nations
Uncitral	United Nations Commission on International Trade Law
UNIDROIT	International Institute for the Unification of Private Law
UNTS	United Nations Treaty Series
VAT	Value Added Tax
Vienna convention on consular relations	Vienna convention on consular relations, done at Vienna on 24 April 1963
Vienna convention on diplomatic relations	Vienna convention on diplomatic relations, done at Vienna on 18 April 1961
Vienna Convention on the Law of Treaties	Convention on the law of treaties, done at Vienna on 23 May 1969

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